Phua Hing Lai v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NOS 01-13, 01-14, 01-15 AND 01-17 OF 1989
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
25 NOVEMBER 1989

Administrative Law — Declaration — Detention under Restrictive Residence Enactment (FMS Cap 39) — Administrative delays in serving restrictive orders on detainees — Delays in service of orders and detainees being taken to various districts mentioned in the orders — Persons already in lawful custody — Application for declarations that restrictive orders were null and void — Delays explained and found not to be unreasonable — Restricted Residence Enactment (FMS Cap 39), ss 2 & 3

Statutory Interpretation — No time prescribed for performance — To be done with all convenient speed — Interpretation and General Clauses Ordinance 1948, s 38 — Interpretation Act 1967, s 54(2)

Words and Phrases — 'As soon as may be' — Restricted Residence Enactment (FMS Cap 39), s 3(ii)

In these cases, the appellants had been arrested by the police pursuant to s 2(1) of the Restricted Residence Enactment (FMS Cap 39) and detained in various prisons. Subsequently orders were issued by the Minister under s 2(ii) of the enactment to the effect that each of them were to reside for a period of three years from the date of the order at Bandaran Kuala Krai, Kelantan and Bandaran Kota Tinggi, Johore respectively. There was a delay of one or more days from the date of the respective orders before the appellants were served with the orders and taken to the various districts mentioned in the orders. The appellants took out originating summonses in the High Court asking for declarations that the restrictive orders issued under s 2(ii) of the enactment against them were null and void and of no effect. The delays were explained by a police officer by affidavits in reply and were stated to be administrative delays. The learned judge accepted the explanation for the delays and dismissed the applications. The appellants appealed.

Held, dismissing the appeals:

As the various delays were administrative delays which were not unreasonable under the circumstances and accepted by the learned judge, the appellants could not succeed in their appeals.

Cases referred to

1 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (distd)
2 *Aminah* v *Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92 (refd)

Legislation referred to

Interpretation Act 1967 s 54(2)
Interpretation and General Clauses Ordinance 1948 s 38
Restricted Residence Enactment (FMS Cap 39) s 2(i), 2(ii), 3(i), 3(ii)

Karpal Singh for the appellants.
Balia Yusof bin Haji Wahi (Deputy Public Prosecutor) for the respondents.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): We considered these appeals together as the main point raised was common to all. The background facts in respect of the appellants were also similar.

At various dates in 1988, all the appellants were arrested by the police pursuant to s 2(i) of the Restricted Residence Enactment (FMS Cap 39) and detained in various prisons pending the issue of an order under s 2(ii) of the enactment. Subsequently, orders under s 2(ii) of the enactment were issued in respect of each of the appellants to the effect that each of them was to reside for a period of three years from the date of the order as follows — in respect of Phua Hing Lai, Lai Poh Kim and Tan Lim restricted to Bandaran Kuala Krai in the district of Kuala Krai, Kelantan; and in respect of Tan Hin Kiang restricted to Bandaran Kota Tinggi in the district of Kota Tinggi, Johore. Action was taken against them based on reports compiled by the police for various alleged criminal activities.

All the appellants took out originating summonses in the High Court Kuala Lumpur asking for declarations that the restriction orders issued under s 2(ii) of the enactment against them were null and void and of no effect.

Their common complaint was that the respondents did not comply strictly with the provisions of s 2(ii) of the enactment in that there was a delay of one or more days from the date of the respective orders before they were served with the orders and then taken to the various districts mentioned in the orders. It was not disputed that there was a delay of one day in respect of appellant Tan Hin Kiang, a delay of two days in respect of appellant Lai Poh Kim, a delay of five days in respect of appellant Phua Hing Lai and a delay of six days in respect of appellant Tan Lim before they were taken to their respective districts.

These delays were explained by DSP Pow Kim Guan in his affidavits-in-reply to the originating summons. In respect of all the complaints, the delays were caused by the necessary arrangements to get the orders served on the appellants and some difficulties in making the arrangements for transportation from the prisons to the various districts of restricted residence. In other words they were administrative delays.

After considering the affidavits of DSP Pow Kim Guan, the learned judge accepted the explanation for the delays in respect of all the cases.

The main point raised in the court below as well as before us was that since the period of three years of restricted residence specified in the orders under s 2(ii) of the enactment was to take immediate effect from the date of the orders, a delay even of one or two days would be fatal

since the detention in the prison would have become invalid from the date the orders were made. All the appellants relied on *PP* v *Koh Yoke Koon*.[1]

Under s 2(i) of the enactment, whenever it shall appear to the Minister on such written information and after such inquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular district or mukim, the Minister may issue an order for the arrest and detention of that person. Section 2(ii) of the enactment then provides that the Minister thereafter, after such further inquiry as he may deem necessary, may make another order (in Form C in the schedule to the enactment) that from a date to be stated in the order that person do reside in such district or mukim as may be specified in the order.

Section 3 of the enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and (ii) are reproduced below:

> (i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
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> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.

It can immediately be observed that there is no time frame given in s 3(i) of the enactment. Since no time is prescribed, then, according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.

There is, however, a time frame given by s 3(ii) of the enactment imposed by the words '*as soon as may be after action has been taken under subsection (i)*' appearing in that subsection. [Emphasis added.] The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah* v *Superintendent of Prison, Pengkalan Chepa, Kelantan*.[2]

Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.

The learned judge correctly distinguished *PP* v *Koh Yoke Koon*[1] since the appellants in this case were all under lawful detention prior to being served with the orders under s 2(ii) of the enactment. The orders of the Deputy Minister under s 2(i) of the enactment also carried the words 'sehingga tuan menerima perintah-perintah selanjutnya melalui saya' (until you receive further orders through me).

Since the various delays as explained by DSP Pow Kim Guan were administrative delays which were not unreasonable under the circumstances and accepted by the learned judge, we did not see how the appellants could succeed in their appeals.

We accordingly dismissed the appeals. After hearing arguments, we made no order as to costs here and below and ordered that the deposits should be refunded to the appellants.

Appeals dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Faridah bte Dato Talib v Mohamed Habibullah bin Mahmood

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22-126-89
LIM BENG CHOON J
14 OCTOBER 1989

Civil Procedure — Jurisdiction of High Court — Domestic violence — Application by wife for injunction to restrain husband from assaulting, harassing and molesting her — Parties Muslims — Whether High Court had jurisdiction to adjudicate on action or whether Syariah Court had exclusive jurisdiction — Whether action could be instituted in view of prohibition of a wife suing her husband in tort — Married Women Ordinance 1957, s 9(2) — Selangor Administration of Islamic Law Enactment 1952, s 45(3) — Selangor Islamic Family Law Enactment 1984 — Courts of Judicature Act 1964, ss 4 & 23 — Federal Constitution, Ninth Schedule List I

Islamic Law — Husband and wife — Application by wife for injunction to restrain husband from assaulting, harassing or molesting her — Whether High Court or Syariah Court has jurisdiction to deal with the matter — Selangor Administration of Muslim Law Enactment 1952, s 45(3) — Selangor Islamic Family Law Enactment 1984 — Federal Constitution, Ninth Schedule List I

Family Law — Injunction to restrain husband from assaulting, harassing or molesting wife — Claim for damages — Whether action can be instituted — Prohibition of action in tort by wife against husband in respect of personal injuries — Married Women Ordinance 1957, s 9(2)

In this case the plaintiff brought an action to restrain her husband, the defendant, from, inter alia, assaulting, harassing or molesting her and members of her family. The defendant applied to strike out the plaintiff's writ and statement of claim under O 18 r 19(1) of the Rules of the High Court 1980. The parties were Muslims. At the hearing, the High Court was asked to decide on two issues, namely: